



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 25, 2003

Mr. Chuck Dickerson
Interim Chairman
Kerr Emergency 9-1-1 Network
87 Coronado Drive, Suite 100
Kerrville, Texas 78028

OR2003-1203

Dear Mr. Dickerson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176936.

The Kerr Emergency 9-1-1 Network (the "network") received four written requests for all documents pertaining to a charge of discrimination filed against the network with the federal Equal Employment Opportunity Commission ("EEOC"). The only document you submitted to this office as being responsive to the request is the "Notice of Charge of Discrimination," with attachments, that the network received from the EEOC concerning a complaint against a former network employee.¹ You contend that the submitted information is excepted from required disclosure pursuant to sections 552.101, 552.102, and 552.103 of the Government Code.

You first contend that the notice of discrimination from the EEOC is made confidential under section 2000e-5 of chapter 42 of the United States Code. In Open Records Decision No. 155 (1977), this office addressed a similar argument regarding a notice of discrimination that a city received from the city's Human Relations Commission, which was empowered to enforce local law banning employment discrimination, and also contracted with the EEOC to assist in enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* In that decision, this office concluded:

We do not believe that the notice of the complaint received by the City as employer is excepted from required public disclosure by the federal law to

¹Consequently, we assume that the network does not possess any other records that are responsive to the requests. If the network in fact does possess other responsive records, they must be released at this time. See Gov't Code §§ 552.301, .302.

which you refer. We have previously held that "the federal statute only restricts disclosure by those enforcing the Equal Employment Opportunity Act" Open Records Decision No. 59 (1974). No federal statute or regulation prevents an employer's disclosure of information relating to a claim of employment discrimination. See Open Records Decision Nos. 132 (1976), 59 (1974).

ORD 155 at 2; *see also Whitaker v. Carney*, 778 F.2d 216 (5th Cir. 1985), *cert. denied* 479 U.S. 813. Accordingly, we conclude that the submitted records, while held by the network, are not made confidential by federal law and thus may not be withheld pursuant to section 552.101 of the Government Code.

You also contend that the submitted records are excepted from required public disclosure pursuant to the "litigation" exception, section 552.103 of the Government Code. To show that section 552.103(a) is applicable, a governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the commission received the records request and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You contend that the submitted information "relates to the subject matter of pending litigation under Federal Law." However, records before us indicate that the current complaint is only subject to proposed mediation and possible investigation by the EEOC. You have not explained, nor is it apparent to this office, that the submitted information relates to litigation that was pending on the date the network received the records requests. Nor have you argued that the requested information relates to "reasonably anticipated" litigation to which the network would be a party. *See* Open Records Decision No. 386 (1983). We therefore conclude that you have not met your burden of establishing the applicability of section 552.103 in this instance. Consequently, the network may not withhold any of the submitted information pursuant to section 552.103.

Finally, we address your contention that the submitted information is excepted from public disclosure pursuant to section 552.102(a) of the Government Code. Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of victim of and witness to sexual harassment protected by common-law privacy).

After reviewing the submitted information, we conclude that the information at issue pertains to the former network employee's actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). On the other hand, we also conclude that the information at issue implicates the privacy interests of another district employee. We have marked the information that the network must withhold in order to protect that employee's privacy interests. The remaining submitted information must be released to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/lmt

Ref: ID# 176936

Enc: Submitted documents

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